exclusively under the control of its own master and each acts independently of the other in doing its part of the work, only the tug in fault need be surrendered.[17] This is admitted by Justice Holmes in the principal case.[18]

The decision of the Supreme Court is undoubtedly correct. The proper test in every case is to determine which vessel was the proximate cause of the injury and that vessel alone need be surrendered. The presence of any other vessel, attached to the one actually in fault, is merely a condition under which the wrongful act takes place, but is not a part of the cause. By implication, Justice Holmes holds there is no doctrine of imputed negligence in admiralty. The theory of the unity of tug and tow is a perversion of the China doctrine;[19] a doctrine that should not be extended.[20] The extent to which courts may be misled by erroneous notions of the relationship of tug and tow is amply illustrated by the confusion of English cases grounded upon the idea that the tug is the servant of the tow.[21]

G. H.

ADVERSE POSSESSION: TRESPASS: TITLE TO CROPS.—That the true owner of land is not entitled to crops grown and harvested on his own soil by another in adverse possession was decided in the case of *Rector v. Lewis*.[1] Defendant in the trial court was awarded rescission of a contract for the exchange of realty with plaintiff and also the gross value of the hay raised by the latter while in possession of the former's land. Reversing the judgment as to damages, Sloane, J., stated[2] that "crops harvested are the property of the one in unlawful possession, and the owner's remedy is to recover the rental value of his land." This well-settled doctrine[3] has been consistently affirmed in the California cases.[4]

Two different reasons, either of which is apparently valid, have been given to sustain this rule. The first[5] is that title to land cannot be tried in a transitory action such as replevin or trover; the second[6] reason is that public policy favors the man with the hoe and the purchaser of crops.

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[17] The Mason, supra, n. 4.
[18] Supra, n. 1, at p. 86.
[19] See The China (1868) 7 Wall. 53, 19 L. Ed. 67.
[20] Austin T. Wright, 8 California Law Review, 112.
[21] Marsden, Collisions at Sea (7th ed.), 211.

[1] (Feb. 17, 1920) 31 Cal. App. Dec. 507.
[2] P. 508.
[3] 1 Tiffany, Real Property (2nd ed.), 525; 15 Harvard Law Review, 486. See especially 29 Yale Law Journal, 539 (March, 1920).
[4] Page v. Fowler (1870) 39 Cal. 412, 2 Am. Rep. 462; Pennybacker v. MacDougal (1873) 46 Cal. 661; Martin v. Thompson (1882) 62 Cal. 618, 45 Am. Rep. 663; Huerstal v. Muir (1884) 64 Cal. 450, 2 Pac. 83; Smith v. Cunningham (1885) 67 Cal. 262, 7 Pac. 679; Emerson v. Whitaker (1890) 83 Cal. 147, 23 Pac. 285; Groome v. Almstead (1894) 101 Cal. 425, 35 Pac. 1021; Johnston v. Fish (1895) 105 Cal. 420, 45 Am. St. Rep. 53, 38 Pac. 979; Hines v. Good (1900) 128 Cal. 38, 60 Pac. 527, 79 Am. St. Rep. 22.
[5] L. R. A. 1918A 552; 29 Yale Law Journal, supra, n. 3.
[6] "It would be an oppressive rule to require everyone who, after years

If by this latter reason is implied an original absence or defect of title in the adverse possessor, but nevertheless a subsequent good title in the buyer, it clearly amounts to an exception to the universal rule of chattels[7] and the establishment of an American market overt. The principal case holds explicitly that the possessor has the property in the crops. This seems sound, for the disseisee cannot be said to be the full owner while another is enjoying adversely the actual possession of the soil. The fiction that the owner has been in possession all the time serves the purpose of grounding an action for mesne profits, but should not be extended to clothe the owner with title to crops after severance.[8]

This protection by the law of a wrongdoer dates far back into history, as is pointed out by Sir Frederick Pollock in his essay "Possession in the Common Law."[9] The learned author noted that the unfortunate disseisee had by the old law merely a right of entry[10] which was in constant danger of being further reduced to a right of action as by a descent cast or an alienation by the disseisor to another.[11] While it is true that modern law has extended his rights and remedies, so that now he can sell or mortgage the property, assign his right of entry or his right of action,[12] enter upon the land though the heir of the disseisor is in possession,[13] it does not appear that there has been any substantial decrease in the powers and privileges of the adverse possessor.[14] Not only is he entitled to the crops, as the principal case holds, but legislation has been enacted in his behalf so that in an action against him for withholding the property recovered, the value of the permanent improvements made by him in good faith must be allowed as a set-off against such damages.[15] Possession in the twentieth century, it would seem, is almost as important in the law of real property as it was in the days of feudalism.

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of litigation, perhaps, may be found to have a bad title, to pay the gross value of all the crops he has raised; and it would be an inconvenience to the public if the bad title of the farmer to his land attached to the crops he offered for sale, and rendered it necessary to have an abstract of title to make it safe to purchase his produce." Page v. Fowler, supra, n. 4, p. 417.

[7] No one can transfer a better title than he has. Williston, Sales, § 311.

[8] Orrin K. McMurray in 8 California Law Review, 109, commenting upon Richmond Wharf etc. Co. v. Blake (1919) 58 Cal. Dec. 398, 185 Pac. 184, where the owner was permitted to recover in an action for use and occupation under § 3334 of the Cal. Civ. Code. See also Brothers v. Hurdle (1849) 10 Ired. L. (N. C.) 490, 495; Churchill v. Ackerman (1900) 22 Wash. 227, 60 Pac. 406. Unsevered crops belong to the true owner, as they form part of the recovered realty. 8 R. C. L. 366; 21 Ann. Cas. 431.

[9] (1888) p. 3. See also Holmes, The Common Law, p. 206.

[10] Ibid., p. 50; Leake, Law of Property in Land, p. 56.

[11] Leake, ibid., p. 59.

[12] Cal. Civ. Code, §§ 1047, 1046, 1044, 2921.

[13] Cal. Code Civ. Proc., § 327.

[14] The adverse possessor is subject to the greater liability of being sued by the owner's transferees.

[15] Cal. Code Civ. Proc., § 741; 1 Tiffany, Real Property (2nd ed.), 553, 554.

Suppose plaintiff in the principal case had been a trespasser and not an adverse possessor. The court includes the word "trespasser" in the statement of the rule. But that the legal status of a trespasser who is disturbing the owner's possession differs from that of a disseisor who openly proclaims title and possession exclusively in himself, must be apparent. Few courts, however, have stopped to note whether the holder of the land is there adversely or merely as a trespasser and few cases have made any distinction on that ground.[16]

California decisions as early as 1860[17] and 1866[18] permitted the real owner to recover timber cut from his land by trespassers. "The mere trespasser who casually or temporarily enters, for the purpose of severing or removing property attached to and forming part of the realty, cannot invoke the rule, for he does not hold the adverse possession."[19] No good reason would seem to appear for refusing replevin or trover in this class of cases.

J. J. P.

ASSIGNMENT: SUFFICIENCY OF NOTICE.—The case of *Oswald v. Schwartz*[1] presents an interesting variation from the typical case of priority among successive assignees of a chose in action for which Graham Paper Co. v. Pembroke[2] lays down the rule in California: "As between successive assignees of a chose in action, he will have the preference who first gives notice to the debtor, even if he be a subsequent assignee, provided at the time of taking the subsequent assignment he had no notice of a prior assignment." In the principal case a contractor, having a claim against an improvement district for payment in bonds in the hands of the county treasurer, assigned his claim to A, who, with the knowledge of the contractor, made successive assignments to B and C. C notified the county treasurer of his claim, while B did not. It was held that C's claim was prior to B's.

Here there are two debtors, the contractor and the ultimate debtor, represented by the county treasurer. In holding that notice must be given to the ultimate debtor, the one in actual custody of the fund, the case rests upon what seems to be the practical ground that notice to be effective in fixing the rights of an assignee must be put on record, so to speak, at the source of the fund, thus furnishing the best means of preventing either the contractor or his assignee from obtaining "a false and delusive credit" on the strength of apparent ownership of the claim.

L. E. K.

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[16] Supra, n. 5, p. 556.

[17] Halleck v. Mixer (1860) 16 Cal. 574.

[18] Kimball v. Lohmas (1866) 31 Cal. 154.

[19] Page v. Fowler (1865) 28 Cal. 605, 611; Ophir Silver Min. Co. v. Superior Court (1905) 147 Cal. 467, 471, 82 Pac. 70; Smyth v. Tennison (1914) 24 Cal. App. 519, 141 Pac. 1059.

[1] (Dec. 1, 1919) 58 Cal. Dec. 496, 185 Pac. 959.

[2] (1899) 124 Cal. 117, 56 Pac. 627; 1 California Law Review, 451.